

REMARKS

Applicants acknowledge receipt of the Examiner's Advisory Action dated October 28, 2008. Applicants note that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 are pending, and that, despite apparent typographical errors to the contrary (see Office Action, pp. 1 and 4 and Advisory Action, p. 1), it appears that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 stand rejected.

Rejections under 35 U.S.C. §112

Since no comments concerning Applicants remarks regarding the Office Action's rejection of claims under § 112 appear in the Advisory Action, Applicants make no further comments on this rejection at this time.

Rejection under 35 U.S.C. §103

Despite apparent typographical errors to the contrary, it appears that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Gorti et al., U.S. Publication No. 2003/0007452 ("Gorti"), in view of Kalkunte et al., U.S. Patent No. 6,118,761 ("Kalkunte"), and further in view of Bass, U.S. Patent No. 6,118,761 ("Bass"). See Office Action, p. 4. In the Response to Final Office Action dated October 6, 2008. Applicants have traversed this rejection for at least the reason that the cited section of Gorti, namely ¶ [0038], fails to teach a first data quantity representing a quantity of data stored in a memory.

In response to Applicants argument that the cited sections of Gorti fail to teach a first data quantity representing a quantity of data stored in a memory, the Advisory

Action states that since Gorti uses its terms in certain ways, including the fact that Gorti considers its pipes “to be queue[s],” it follows that ¶ [0038] of Gorti can be summarized as teaching that “the quantity is determined within the pipe/queue at a point in time, which is based on many factors: flow available, excess bandwidth signals, etc.,” where “the flow available is the quality [sic] of data stored in the memory.” Thus, the Advisory Action concludes that it is clear that Applicants argument is “in clear error.” *See* Advisory Action, p. 2.

Applicants, however, cannot understand the point the Advisory Action is trying to make. First, Gorti clearly distinguishes its queues from its pipes. For example, ¶ [0031] of Gorti states that:

Referring to **FIGS. 2A and 4**, the minimum and maximum flow rate for pipes providing traffic to queue **16** are set, as illustrated at step **102**. The pipes may come from any of ports **A 12** to enqueueing mechanism **14**.

(Emphasis in original.) Thus, not only are Gorti’s pipes associated with item **12** of FIG. 2A (they may “come from any of ports **A 12**”) and not with item **16**, Gorti’s queue, but Gorti’s pipes “provide traffic to” its queues. Thus, Gorti clearly distinguishes its queues from its pipes, and Gorti does not consider its pipes to be queues.

Second, the “flow available” does not indicate the amount of data that is stored in a memory. The term “flow” is defined in ¶ [0031] by the equation  $f_i(t) = O_i(t) * T_i(t)$ , where  $O_i$  represents the rate at which “the  $i^{\text{th}}$  pipe” offers “traffic to queue **16**” and  $T_i$  represents “the fraction of traffic from the  $i^{\text{th}}$  pipe which is transmitted to queue **16**.” Thus, since  $T_i$  is a unitless quantity, it follows that the flow,  $f_i$ , has the same units at  $O_i$ . In other words,  $f_i$  has units of a rate (e.g. packets per second), not units of an amount or quantity of data stored in a memory (e.g. bytes, or bits). Thus, since the “flow available” is a flow, it will

also have units of a rate and will not have units that would allow it to identify or represent the quantity of data stored in a memory.

Third, even assuming the usage of Gorti's terms, as set forth in the Advisory Action, Applicants do not agree that ¶ [0038] of Gorti can be summarized as teaching that "the quantity is determined within the pipe/queue at a point in time, which is based on many factors: flow available, excess bandwidth signals, etc." Nowhere in ¶ [0038] does Gorti mention the quantity or amount of data contained in Gorti's pipes or queues. The paragraph does mention certain quantities, but none of these are the amount of data contained in Gorti's pipes or queues. The paragraph mentions the following types of quantities: flow rate, flow rate threshold, flows, and bandwidth signal B. None of these quantities would have units capable being associated with the amount of data stored in a memory. Flow rate thresholds and flow rates have, of course, units of a rate (e.g. packets per second). As discussed above, flows also have units of a rate (e.g. packets per second). Since the bandwidth signal appears to operate as a logical quantity (it can be "ANDed") it is unitless. Thus, none of the types of quantities mentioned in ¶ [0038] have the type of units that would be required to represent, stand for, or identify a quantity or amount of data (e.g. bytes, bits, etc.). Therefore, it cannot be the case that ¶ [0038] of Gorti teaches determining the quantity of data within Gorti's pipes or queues.

Lastly, Applicants suspect that the response given in the Advisory Action may be based on a misreading of Applicants' claim language, though Applicants cannot tell with certainty whether this is the case. Applicants' suspicion arises since the Advisory Action's statement that "the flow available is the quality [sic] of data stored in the memory" could be understood as stating the assertion that Gorti's "flow available" is a

quantity that is stored in a memory, rather than the assertion that Gorti's "flow available" represents, stands for, or indicates an amount or quantity of data that is stored in a memory. If the Advisory Action intended to make the former assertion, then the Advisory Action is making an assertion that is not responsive to Applicants' claim language. If the Advisory Action intended to assert the latter, then the Advisory Action is making a claim that is responsive to Applicants' claim language, though it suffers at least the infirmities mentioned above. Applicants claim limitations related to "generating a first data quantity value representing a quantity of data stored in the memory at a first point in time" require the generating of a quantity that represents, stands for, or indicates the amount or quantity of data stored in a memory. These limitations do not simply require the generation of a quantity that is stored in memory.

*Request for Reconsideration and Withdrawal*

While Applicants admit that they cannot fully understand the nature of the basis for the Advisory Action's continued rejection of Applicants' claims, Applicants believe that the comments set forth above, in conjunction with the previous comments made in the Response to Final Office Action dated October 6, 2008, provide sound reasons showing the allowability of all rejected claims. Therefore, Applicants respectfully request the reconsideration and withdrawal of the rejection against all claims.

*Reiteration of Request for Detailed Information*

In addition, given Applicants' inability to fully understand the nature of the basis for the Advisory Action's continued rejection of Applicants' claims, Applicants reiterate

their request that the Examiner explicitly identify at least the quantities taught in the relevant references that the Examiner takes to correspond to (1) the first data quantity representing a quantity of data stored in a memory, and (2) the first predetermined value. Note that the first data quantity representing a quantity of data stored in memory will be a quantity that identifies the amount of data that is stored in a memory. Therefore, it will be a quantity for which it would be appropriate to associate units indicating a quantity or amount of data (e.g. bytes, bits, etc.). Likewise, the first predetermined value will be a quantity for which it would be appropriate to associate units indicating a quantity or amount of data (e.g. bytes, bits, etc.).

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'E. Stephenson', with a long horizontal flourish extending to the right.

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